IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 204 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No @@2. To be referred to the Reporter or not? No @@2. To e referred to the Reporter or not? No @@2. To be referr d to the Reporter or not? No @@2. To be referred to the Reporter or not? No @@2. To be referred to the Reporter or not? No @@2. To be referred to the Reporter or not? o @@2. To be referred to the Reporter or not? No @@2. To be referred to the Reporter or not? No @@2. To be referred to the Reporter or not? No @@2. To be referred to the Reporter or not? No @@2. To be referred to the Reporter or not? No @@2. To be referred to the R porter or not? No @@2. To be referred to the Reporter o no

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

COMMISSIONER OF INCOME TAX

Versus

AHMEDABAD KAISER I HIND MILLS CO LTD.

Appearance:

MR PRANAV G. DESAI with MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE
Date of decision: 23/03/99

ORAL JUDGEMENT (per J.N. Bhatt, J.)

In this reference u/s 256(1) of the Income-tax Act, 1961 (I.T. Act for short), at the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has referred the following questions of law for our opinion.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the Commissioner of Income-tax had no jurisdiction u/s 263 of the Income-tax Act, 1961 to set aside the order dated 23rd December, 1978 passed by the ITO when the same was never the subject mater of appeal?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the order of the ITO was not erroneous or prejudicial to the interest of revenue because two views were possible on the question of granting of interest on the refund of advance-tax and therefore the Commissioner of Income-tax had no powers u/s 263 of the Income-tax Act, 1961 to revise such an order?"

2. As found from the statement of the case, the assessee is a public limited company. The assessment year involved is, 1975-76. The assessment, whereof, came to be completed u/s 143(3) of the I.T. Act, on 3.11.1976. The assessee moved an application u/s 154 of the I.T. Act requesting that the interest u/s 214, on excess payment of advance tax, being an instalment of the total tax paid, should have been allowed. The ITO concerned, upon verification of the record, and in view of the certificate issued by the bank, found the request justified and correct. Therefore, he held that the mistake was apparent from the record and the same was

required to be rectified.

3. The C.I.T., upon examination of the record and also the order of the ITO u/s 154 of the I.T. Act, found that the ITO was not right in allowing interest u/s 214 on the further refund of Rs. 2,76,304/- as it was not a case of regular assessment. Therefore, it was held by the C.I.T. that the order recorded by the ITO was erroneous and prejudicial to the interests of the revenue. That is how, the show-cause notice came to be issued to the assessee, requiring him to show cause as to why the order of ITO u/s 154 of the Act, should not be cancelled.

4. Pursuant to the show-cause notice, the assessee's contention before the C.I.T. was that the order of ITO u/s 154 was not available for the purpose of a proceeding u/s 163 of the I.T. Act, in respect of relevant A.Y. 1975-76, which was negatived. Therefore, the impugned order of ITO before the C.I.T. u/s 154 was reversed, holding it to be incorrect and prejudicial to the interests of the revenue, and which came to be reversed by the Tribunal. Hence, the reference, at the instance of the revenue.

5. The reference on hand stands concluded and covered squarely by the pronouncement of the Hon'ble Apex Court in CIT, Kolhapur v. Jaykumar B. Patil, (1998) 8 SCC 507 and followed in CIT, Gujarat-I, Ahmedabad v. Shri Arbuda Mills Ltd., Ahmedbad, (1998) 9 SCC 702, wherein it has been clearly propounded that the issue which is not touched by the CIT (Appeals) in his appellate order, he (CIT) has jurisdiction and power to initiate proceedings u/s 263 of the I.T. Act, in respect of such issue. It was further held in the said judgment that the question of merger of order would not arise as the decision on such issue was not earlier touched and examined by the CIT (Appeals).

6. In the circumstances, we answer both the questions in negative, that is, in favour of the revenue and against the assessee. Accordingly, this reference stands disposed of without any order of costs.

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